

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS N. BONILLA

CIVIL ACTION

v.

NO. 96-501

J. MALEBRANCE, ET AL.

MEMORANDUM

Broderick, J.

December 9, 1997

Plaintiff Nicholas Bonilla, a prisoner at State Correctional Institution Houtzdale in Houtzdale, Pennsylvania, has filed a claim pursuant to 42 U.S.C. § 1983 against Dr. Josy Malebranche¹ and various other John/Jane Doe defendants claiming that defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Defendants were members of, or responsible for, the medical staff at S.C.I. Graterford, where plaintiff was incarcerated at the time of his injury.

Presently before the Court are defendant Malebranche's motion for summary judgment and plaintiff's motion for leave to amend his complaint to name two of the John/Jane Doe defendants. For the reasons set forth below, the Court will grant defendant Malebranche's motion for summary judgment and award judgment in

¹ According to defense counsel, the name of the first defendant in this case is "Josy Malebranche." The Court will use this spelling rather than the spelling used in the complaint and in the caption.

his favor. The Court will also deny the plaintiff's motion for leave to amend his complaint and dismiss his claims against the other defendants.

I. BACKGROUND

The plaintiff commenced this action on January 24, 1996. On April 4, 1996, the Court granted plaintiff's motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. In his pro se complaint, plaintiff alleges that he was seriously injured in January, 1994 when another inmate at S.C.I. Graterford accidentally dropped a forty pound weight on his right hand. Plaintiff claims that he was taken to see a registered nurse on the medical staff, who completed a medical report and gave him a pain killer under instruction from defendant Malebranche. Although plaintiff received treatment from the nurse, he alleges that defendant Malebranche failed to diagnose, examine or treat his fractured hand in deliberate indifference to plaintiff's serious medical needs. Plaintiff also alleges that the John/Jane Doe defendants (a radiologist and other persons responsible for medical services at the prison) failed to timely x-ray his hand or provide proper medical assistance in deliberate indifference to his serious medical needs.

After several months of discovery, defendant Malebranche filed a motion for summary judgment which included his sworn affidavit and a copy of the plaintiff's medical records. The defendant contends that he personally examined the plaintiff on

January 29, 1994, at which time he ordered x-rays and prescribed pain medication and the use of an ace bandage and sling. The medical records confirm that plaintiff was seen on several occasions over a one and one-half month period for treatment relating to his right hand. The defendant contends that plaintiff's allegations do not rise to the level of medical mistreatment under the Eighth Amendment.

On June 3, 1997, following the filing of defendant's motion for summary judgment, the Court entered an Order that provided:

Plaintiff is herewith notified that in the event he fails to file on or before Friday, June 27, 1997 an opposing affidavit based on personal knowledge or bring to the attention of this Court depositions, answers to interrogatories, admissions or other factual evidence submitted under oath which raise genuine issues of material fact, this Court, pursuant to Rule 56, may determine that there are no genuine issues of material fact and may grant summary judgment against Plaintiff should this Court determine that Defendant is entitled to summary judgment as a matter of law.

On June 24, 1997, the Court entered an Order granting plaintiff an extension of time until July 28, 1997 to respond to defendant's motion. After receiving this extension, plaintiff submitted his own affidavit, in which he states that he went to the medical facility at S.C.I. Graterford on January 29, 1994. Plaintiff states that, although he was seen by a nurse and given mild pain relievers, he was never examined by the attending physician, defendant Malebranche. Plaintiff further states that x-rays taken on February 2, 1994 revealed a fracture in his right hand, and that an orthopedic specialist recommended

immobilization of the hand on February 4, 1997. Nowhere in the affidavit, however, does plaintiff attest that he was denied medical care with deliberate indifference to his serious medical needs, although he does make this claim in the legal memorandum accompanying his response.

II. STANDARD OF REVIEW

The law is clear that when a motion for summary judgment is filed, the non-moving party cannot rest on the mere allegations of the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Rather, in order to defeat the motion for summary judgment, the non-moving party, by its own affidavits, or by depositions, answers to interrogatories or admissions on file, as stated in Rule 56(e), "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

As Celotex teaches, "the plain language of rule 56(c) mandates entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Where the nonmoving party fails to make such a showing with respect to an essential element of its case, "there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of a non-moving party's case

necessarily renders all other facts immaterial." Id. at 323. The moving party is entitled to a judgment as a matter of law whenever the nonmoving party has failed to make a sufficient showing on an essential element of his own case with respect to which he has the burden of proof.

III. DISCUSSION

In the seminal case of Estelle v. Gamble, 429 U.S. 97, 104 (1976), the United States Supreme Court held that "deliberate indifference to the serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.'" Consistent with this holding, the Supreme Court in Estelle made it clear that:

. . . in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute "an unnecessary and wanton infliction of pain" . . . Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment.

Id. at 105-06.

As pointed out by the Third Circuit, one must distinguish between a claim of "deliberate indifference to serious medical needs" and a claim of "an inadvertent failure to provide adequate medical care." Concerning the latter, the Third Circuit has stated that:

Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgment and to constitutionalize claims which sound in state tort law.

United States ex rel. Walker v. Fayette County, Pennsylvania, 599 F.2d 573, 575 n.2 (3d Cir. 1979); see also Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993) ("[T]he law is clear that simple medical malpractice is insufficient to present a constitutional violation."). In assessing claims of Eighth Amendment violations and specifically the meaning of "deliberate indifference," the Supreme Court has recently explained:

Our cases have held that a prison official violates the Eighth Amendment only when two requirements are met. First the deprivation alleged must be objectively, "sufficiently serious . . ."

The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." . . . To violate the Cruel and Unusual Punishments clause, a prison official must have a "sufficiently culpable state of mind. . ."

[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. . . . [A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.

Farmer v. Brennan, 511 U.S. 825, 834, 837-38 (1994).

In the instant case, there is no dispute that the plaintiff injured his right hand and was treated in the medical facility at S.C.I. Graterford on January 29, 1994. Defendant Malebranche claims that he personally examined the plaintiff on that date. The plaintiff claims that he was only treated by a nurse, not defendant Malebranche. However, both parties agree that the

plaintiff was initially directed to take pain killers and use an ace bandage and sling, and was x-rayed and examined by an orthopedic specialist just a few days later. After due consideration, the Court finds that the plaintiff has failed to present material facts in the form of affidavits, depositions, answers to interrogatories, or admissions to support his contention that defendant Malebranche's actions constitute deliberate indifference to the plaintiff's medical needs under the Eighth Amendment. The plaintiff did receive some medical treatment. At most, he might be able to state claim for simple medical malpractice, but the law is clear that this is insufficient to present a constitutional violation. Accordingly, the Court will grant summary judgment in favor of defendant Malebranche and against the plaintiff.

In addition, the Court finds that the plaintiff has presented no factual allegations either in his complaint or his proposed amended complaint which would support his contention that the other defendants, who were members of or responsible for the medical staff at S.C.I. Graterford at the time of plaintiff's injury, are liable under the Eighth Amendment. The plaintiff seeks to amend his complaint to name two of the John/Jane Doe defendants: Correctional Physician Services, Inc. and Jackie Augustine, the correctional health care administrator at S.C.I. Graterford. There is no evidence that these defendants, or any of the John/Jane Doe defendants, either knew of or disregarded a serious risk to the plaintiff's medical needs. Accordingly, the

Court will dismiss the plaintiff's claims against these defendants. The Court will also deny the plaintiff's motion for leave to amend his complaint to name two of the John/Jane Doe defendants, as his claims against these defendants are insufficient to present a constitutional violation. Freedman v. City of Allentown, 853 F.2d 1111, 1114-15 (3d Cir. 1988).

CONCLUSION

For the reasons set forth above, the Court will grant defendant Malebranche's motion for summary judgment and award judgment in his favor and against the plaintiff. The Court will also deny the plaintiff's motion for leave to amend his complaint and dismiss his claims against the unnamed defendants.

An appropriate Order follows.

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ORDER

AND NOW, this 9th day of December, 1997, for the reasons set forth in this Court's Memorandum of this date;

IT IS ORDERED: Defendant Malebranche's motion for summary judgment (Document No. 25) is GRANTED; and judgment is ENTERED in favor of Defendant Josy Malebranche and against Plaintiff Nicholas Bonilla.

IT IS FURTHER ORDERED: Plaintiff's motion for leave to file an amended complaint (Document No. 32) is DENIED.

IT IS FURTHER ORDERED: Plaintiff's claims against the remaining John/Jane Doe defendants are DISMISSED.

RAYMOND J. BRODERICK, J.